

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

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**DONALD POLK and  
LETICIA VILLARREAL DE POLK,**

Plaintiffs,

vs.

**UNITED STATES OF AMERICA,**

Defendant.

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) **Civil Action No. 22-00896-MBH**  
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**COMPLAINT (CORRECTED)**<sup>1</sup>

Plaintiffs Donald Polk and Leticia Villarreal de Polk, by and through their undersigned attorneys, state and allege as follows:

**NATURE OF ACTION**

1. In this action, Plaintiffs seek recovery of federal income taxes, plus statutory interest on those amounts, overpaid for the tax period ending December 31, 2008.

2. The Internal Revenue Service, an agency of defendant United States of America, received payments of taxes in excess of what was, in fact, owed by Plaintiffs for the tax period ending December 31, 2008, the year at issue in this action.

**PARTIES, JURISDICTION, AND VENUE**

3. Plaintiffs are husband and wife.
4. Plaintiffs currently reside at 38 Lakeshore Boulevard, Kingston, Ontario, Canada.
5. At the time Plaintiffs filed the tax returns at issue, they resided at Rua Garauna 44, Loteamento Alphaville, Campinas, Sao Paulo, Brazil.

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<sup>1</sup> This corrected complaint is identical to the original complaint filed by Plaintiffs on August 12, 2022. The only change is that a corrected version of Exhibit B is attached hereto.

6. Defendant is the United States of America.

7. This action arises under the Internal Revenue Code for the recovery of federal income taxes paid by Plaintiffs for the tax period ending December 31, 2008, pursuant to 26 U.S.C. § 7422.

8. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1346(a)(1) and 1491.

9. Venue is proper in this Court.

### **STATEMENT OF FACTS**

#### **A. Substitute Return for 2008**

10. On or about August 16, 2010, the Internal Revenue Service prepared a substitute income tax return for Plaintiffs for the tax period ending December 31, 2008, pursuant to Internal Revenue Code section 6020(b). The filing of that substitute return resulted in an assessment of taxes in the amount of \$156,796.00, as well as late filing and payment penalties and interest.

11. On or about October 22, 2012, the Internal Revenue Service applied a payment from Plaintiffs in the amount of \$217,720.21 to Plaintiffs' Form 1040 account for the tax period ending December 31, 2008.

12. On or about January 4, 2013, the Internal Revenue Service applied a payment from Plaintiffs in the amount of \$398.35 to Plaintiffs' Form 1040 account for the tax period ending December 31, 2008.

#### **B. Plaintiffs' Form 1040 Income Tax Return for 2008**

13. On or about April 12, 2018, Plaintiffs filed a Form 1040 individual income tax return for the tax period ending December 31, 2008. This return was tendered for filing to an Internal Revenue Service Revenue Officer whose office was located at 915 Second Avenue, MS

214/DN, Seattle, Washington 98174-1009. A true and correct copy of Plaintiffs' Form 1040 for the tax period ending December 31, 2008, is attached hereto as Exhibit A.

14. Plaintiffs' Form 1040 tax return claimed a foreign tax credit on line 47 in the amount of \$37,170.00

15. Plaintiffs' Form 1040 tax return inadvertently failed to reflect Plaintiffs' prior payments of \$217,720.21 and \$398.35.

16. Plaintiffs' Form 1040 tax return reflected a balance due of \$22,022.00

**C. Plaintiffs' Form 1040X Amended Income Tax Return for 2008**

17. On or about February 11, 2019, Plaintiffs filed a Form 1040X amended income tax return for 2008. This return was tendered for filing to an Internal Revenue Service Appeals Officer whose office was located at 701 Market Street, Suite 2200, Philadelphia, Pennsylvania 19106. A true and correct copy of Plaintiffs' Form 1040X for the tax period ending December 31, 2008, is attached hereto as Exhibit B.

18. Plaintiffs' Form 1040X amended tax return claimed a foreign tax credit on line 47 in the amount of \$37,170.00.

19. Plaintiffs' Form 1040X amended tax return reflected their prior payments of \$217,720.21 and \$398.35 on line 63.

20. Plaintiffs' Form 1040X amended tax return reflected a refund due of \$196,690.00.

21. Plaintiffs' claim for refund in the amount of \$196,690.00 for the tax period ending December 31, 2008, was timely filed pursuant to Internal Revenue Code section 6511(d)(3).

**D. The Internal Revenue Service Approves Plaintiffs' Refund Claim**

22. On or about May 27, 2019, the Internal Revenue Service mailed Notice CP21B to Plaintiffs. A true and correct copy of Notice CP21B is attached hereto as Exhibit C.

23. Notice CP21B stated that “you are due a refund” in the amount of \$182,481.89 for the tax period ending December 31, 2008.

24. Notice CP21B further stated that “[w]e made the changes you requested to your 2008 Form 1040A to adjust your: • account information • filing status to married filing joint return • penalty charge.”

**E. The Internal Revenue Service Disallows Plaintiffs’ Refund Claim**

25. On or about August 28, 2020, the Internal Revenue Service mailed Letter 105C to Plaintiffs. A true and correct copy of Letter 105C is attached hereto as Exhibit D.

26. Letter 105C stated that the Internal Revenue Service “disallowed your claim for credit for the tax period listed at the top of this letter.”

27. Letter 105C stated that Plaintiffs’ claim was in the amount of \$182,481.89 for income taxes for the tax period ending December 31, 2008.

28. Under the heading “WHY WE CAN’T ALLOW YOUR CLAIM,” Letter 105C stated that “[y]ou filed your original tax return more than 3 years after you paid the tax.”

**COUNT ONE**

**(Claim for Refund – \$196,096.00 for the Tax Period Ending December 31, 2008)**

29. Plaintiffs repeat and incorporate each of the foregoing allegations as if fully set forth herein.

30. Plaintiffs’ Form 1040X individual income tax return for the tax period ending December 31, 2008, sought a refund in the amount of \$196,096.00 plus statutory interest.

31. Plaintiffs’ Form 1040X individual income tax return sought a foreign tax credit on line 47 in the amount of \$37,170.00.

32. Plaintiffs’ Form 1040X individual income tax return for the tax period ending December 31, 2008, was timely filed pursuant to Internal Revenue Service section 6511(d)(3).

33. The Internal Revenue Service acknowledged in Notice CP21B dated May 19, 2019, that Plaintiffs were entitled to a refund for the tax period ending December 31, 2008.

34. The Internal Revenue Service nonetheless improperly disallowed Plaintiffs' claim for refund as set forth on their Form 1040X amended income tax return for the tax period ending December 31, 2008.

35. Plaintiffs timely protested the disallowance of their refund claim for the tax period ending December 31, 2008.

36. To date, the Internal Revenue Service has not granted Plaintiffs' refund claim for the tax period ending December 31, 2008, in the amount of \$196,096.00 plus statutory interest.

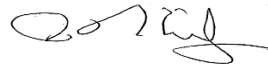
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Donald Polk and Leticia Villarreal de Polk demand:

1. Judgment in their favor and against the United States of American in the amount of at least \$196,096.00 for the tax period ending December 31, 2008, plus statutory interest on that amount as allowed by law.
2. Costs of this action.
3. Award of reasonable litigation costs and fees incurred in this action pursuant to Internal Revenue Code section 7430 and Title 28, United States Code, section 2412.
4. Such other relief as the Court deems just and proper.

Respectfully submitted,

**FOX ROTHSCHILD LLP**



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Dated: August 22, 2022